

**ENTERED**

December 08, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

THE UNITED STATES	§	CIVIL ACTION NO
OF AMERICA <i>ex rel</i>	§	4:21-cv-03347
MICHAEL SIEMER,	§	
Plaintiff,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
CEPEDA DRYWALL	§	
LLC,	§	
Defendant.	§	

**ORDER**

Plaintiff The United States of America brought this action by and through *qui tam* Relator Michael Siemer against Defendant Cepeda Drywall LLC on September 24, 2021. Dkt 1.

The United States served a copy of the complaint and summons on Cepeda Drywall on September 26, 2022. Dkt 12. Rule 12(a)(1)(A)(ii) of the Federal Rules of Civil Procedure required it to answer or file an otherwise responsive pleading within twenty-one days of service. This meant October 17, 2022. It hasn't done so. The United States thus moves for entry of default. Dkt 15.

Rule 55(a) provides, "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

The motion by the United States for entry of default against Cepeda Drywall is GRANTED. Dkt 15.

The Clerk is ORDERED to enter default against Defendant Cepeda Drywall LLC.

Rule 55 governs applications for default and default judgment. Though formalistic, this involves sequential steps of default, entry of default, and default judgment. A *default* occurs “when a defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules.” *New York Life Insurance Company v Brown*, 84 F3d 137,141 (5th Cir 1996). An *entry of default* is what the clerk enters when a plaintiff establishes the default by affidavit or otherwise pursuant to Rule 55(a). A *default judgment* can thereafter enter against a defendant upon application by a plaintiff pursuant to Rule 55(b)(2).

The United States may now bring a further motion for default judgment, which itself affords Cepeda Drywall a further chance to respond and defend. The United States must provide a proposed form of default judgment with any such motion.

SO ORDERED.

Signed on December 7, 2022, at Houston, Texas.

A handwritten signature in black ink, reading "Ch R Eskridge" with a stylized flourish at the end.

Hon. Charles Eskridge  
United States District Judge